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In the United States Patent and Trademark Office

Appellants: Robert L. Popp et al. Docket No.: 19,814
Serial No.: 10/632,596 Group: 3761
Confirmation No: 4322 Examiner: Jacqueline F. Stephens
Filed: August 1, 2003 Date: January 22, 2008
For: Fastener Orientation For Packaged Garments Having Refastenable Seams

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Stephens' Final Rejection of claims 1-22 which was mailed on August 23, 2007.

On November 20, 2007, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. The Office date of receipt of the Notice of Appeal is November 23, 2007. Thus, the time period for filing this Brief ends January 23, 2008.

Real Party In Interest

The Real Party in Interest is Kimberly-Clark Worldwide, Inc., the assignee of record, which is a subsidiary of Kimberly-Clark Corporation.

Related Appeals and Interferences

There are no related appeals and/or interferences with regard to the present Application.

Status of Claims

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Claims 1-22 remain in the application with claims 1-22 being finally rejected. The claims on appeal are 1-22, which appear in the Claims Appendix of this Brief.

Status of Amendments

No amendments were filed after the Final Office Action mailed August 23, 2007.

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Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

Please charge the \$510.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

The undersigned may be reached at: (920) 721-7844.

Respectfully submitted,

ROBERT L. POPP ET AL.

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CERTIFICATE OF TRANSMISSION

I hereby certify that the attached correspondence comprising:

BRIEF ON APPEAL (16 pages)

17 Total pages, including this page

is being transmitted on January 22, 2008 to the United States Patent and Trademark Office via facsimile addressed to Commissioner for Patents, Fax No. (571) 273-8300.

Judy L. Halbrook

(Typed name of person transmitting correspondence)



(Signature of person transmitting correspondence)

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Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to a packaged garment defining a waist opening and a leg opening, wherein the garment includes a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, a crotch region connecting the front and back regions, a front side panel extending transversely from a side of the front panel, and a back side panel extending transversely from a side of the back panel. See, e.g., page 18, line 19 to page 19, line 17, Figs. 1-3 and 5-13. The front side panel is connected to the back side panel to form a prefastened, refastenable seam, and the refastenable seam comprises a fastening component. See, e.g., page 16, lines 14-19; Figs. 1-3 and 5-13. The fastening component lies in a plane approximately perpendicular to a plane in which the front panel lies. See, e.g., page 36, line 10 to page 38, line 4; Figs. 5-14.

Independent claim 11 is similar to claim 1, but further specifies that the garment includes first and second front side panels extending transversely from respective sides of the front panel, each front side panel having a body facing surface and a clothing facing surface; and first and second back side panels extending transversely from respective sides of the back panel, each back side panel having a body facing surface and a clothing facing surface. See, e.g., page 18, line 19 to page 19, line 17, Figs. 1-3 and 5-13. The first front side panel is connected to the first back side panel to form a first prefastened, refastenable seam, the first refastenable seam comprising a first fastening component; and the second front side panel is connected to the second back side panel to form a second prefastened, refastenable seam, the second refastenable seam comprising a second fastening component. See, e.g., page 16, lines 14-19; Figs. 1-3 and 5-13. The first and second fastening components lie in first and second planes, and the first and second planes are approximately perpendicular to a plane in which the front panel lies. See, e.g., page 36, line 10 to page 38, line 4; Figs. 5-14.

Independent claim 18 is directed to a packaged garment similar to the garment described in claim 1, but in claim 18, the fastening component is described as lying in a plane that is approximately parallel to a plane in which an adjacent enclosure side wall lies. See, e.g., page 44, lines 5-14; Figs. 14-16.

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Independent claim 19 is directed to a package of prefastened, refastenable garments. See, e.g., page 43, lines 11-21; Figs. 14-17. The package comprises a generally polyhedral enclosure composed of a flexible material surrounding a plurality of prefastened, refastenable garments, wherein the polyhedral enclosure comprises a pair of side walls, a pair of end walls, a top wall, and a bottom wall. See, e.g., page 43, lines 13-17; Figs. 14-17. Each of the garments in the package is similar to the garments described in claims 1 and 18, in that each garment includes a refastenable seam having a fastening component, and the fastening component lies in a plane approximately perpendicular to a plane in which the front region lies, and lies in a plane approximately parallel to a plane in which an adjacent side wall lies. See, e.g., page 16, lines 14-19; page 36, line 10 to page 38, line 4; page 44, lines 5-14; Figs. 1-16.

Independent claim 22, like independent claim 19, is directed to a package of prefastened, refastenable pant-like disposable garments, but recites that the fastening component of each garment lies in a plane which is approximately parallel to a plane occupied by an adjacent enclosure wall. See, e.g., page 45, line 8 to page 46, line 19; Figs. 15-17.

Grounds of Rejection to be Reviewed on Appeal

1. Whether claims 1-22 are unpatentable under 35 U.S.C. 102(a) over U.S. Patent Application Publication No. US 2002/0123730 published to Popp et al (hereinafter "the '730 application").

Argument

1. Applicants assert that claims 1-22 are not anticipated by the '730 application.

This invention is directed to packaged, disposable garments having refastenable seams which are oriented to minimize fastener damage, which can assist in minimizing inadvertent fastener pop-opens during use of the garments.

Prefastened, refastenable absorbent garments, such as children's training pants or adult incontinence garments, may include mechanical fasteners, such as hook components. Refastenable seams employing mechanical fasteners have been found to be particularly beneficial when used in conjunction with pant-like disposable garments. Refastenable seams allow for the garment to be easily applied and removed, as well as periodically opened to check for exudates, and closed if no exudates

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are found. For example, pant-like, "pull-on" style disposable garments can have one or more prefastened, refastenable side seams. One means of providing a prefastened, refastenable side seam in a pant-like disposable garment is through the use of a mechanical fastener, such as a hook material.

For vending purposes, it is common for pant-like disposable garments to be stacked and placed within tightly compressed packaging. In packaging garments having conventional, permanently bonded, non-refastenable side seams using conventional packaging techniques, it is common for the non-refastenable side seams of the garments to be disposed outside of the stack of garments in a generally uncontrolled manner, rather than being purposefully tucked within the stack of garments. The conventional, bonded side seams of garments stacked in the former manner can press tightly against the wall of the package due to the compressed nature of the package configuration. These conventional, bonded side seams do not use refastenable fasteners and accordingly are not negatively impacted by this compressive force.

This packaging technique, in which the side seams reside in the space next to package walls in a generally uncontrolled manner, is not ideal for garments having refastenable seams employing mechanical fasteners such as hook components. This is because the hook material can become tightly compressed between the central portion of the stack of garments and the package wall, leading to creasing/crushing of the hook material. Damage to the fastener material may lead to inferior fastener performance (lower peel and/or shear values than uncreased fasteners). Products with severe and/or multiple fastener creases tend to be most apt to pop open during application and wear. See, e.g., specification, page 2, line 9 through page 4, line 1.

a. Independent Claim 1

Appellants' invention, in the embodiment set forth in claim 1, addresses the above-described problems by positioning the packaged garment in such a way that the fastening component lies in a plane that is perpendicular to the plane in which the front panel of each garment lies. For example, as representatively illustrated in Figs. 5 - 17, a packaged garment has fastening components 82 that lie in a plane that is perpendicular to the plane in which the front panel 35 lies. This approach helps to decrease the likelihood that the mechanical fastener 35 will become creased or crushed due to the pressure imparted by the bag walls in certain packaging configurations, such as those shown in Figs. 14-17.

The '730 patent and the embodiment of the present invention set forth in claim 1 offer two different, nearly opposite solutions to related but different problems. In an alternative conventional packaging technique, the side seams of pant-like garments are tucked within the stack of garments by being positioned within, above, or below the garment during packaging, such as the configurations

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depicted in Figs. 4-19 of the '730 patent. If such side seams include mechanical fasteners, the mechanical fasteners, being tightly "sandwiched" within the stack, can become creased/crushed. The '730 patent approaches this problem - creased and damaged fasteners in garments having tucked refastenable seams - by ensuring that the fastener lies in a plane that is parallel to the front and back portions of the garment. By positioning the fastener in a plane that is parallel to the front and back portions in accordance with '730 patent, the probability of the fastener becoming creased or crushed in those particular packaging configurations is reduced.

The '730 patent is directed to essentially the opposite of Appellants' invention as presently claimed. The '730 patent is directed to packaged, prefastened pant-like garments whose fastener lies in a plane that is parallel to the plane in which the front and back portions of the garment lie. See, e.g., the '730 patent, Figs. 4-19. The invention as set forth in claim 1, in direct contrast, is directed to packaged, prefastened pant-like garments whose fastener lies in a plane that is perpendicular to the plane in which the front panel lies. There is no illustration, description, teaching, or suggestion in the '730 patent to position the fastening component so that it lies in a plane that is perpendicular to the plane in which the front panel lies.

The Examiner appears to take the position that the '730 patent does in fact teach positioning the fastening component so that it lies in a plane that is perpendicular to the plane in which the front panel lies. In support of this position, she states the following:

[T]he plane of the front of the garment includes a horizontal and a vertical dimension. While the fastening component may be parallel to the vertical dimension, it is perpendicular to the horizontal dimension.

Final Office Action dated August 23, 2007, page 2.

The Examiner appears to have a fundamental misunderstanding of the nature of a plane. A "plane" includes neither a horizontal nor a vertical dimension. A plane is a hypothetical two-dimensional, flat construct - an infinitely vast and infinitesimally thin sheet oriented in space.¹

Claim 1 sets forth that "the fastening component lies in a plane approximately perpendicular to a plane in which the front panel lies." The term "plane" is defined by Appellants as follows:

As used herein, the "plane" in which a component lies is the plane which includes the components largest two dimensions. For example, the plane in which a fastening component "lies" is the plane which includes the length and width dimensions of the fastening component, both of which are greater than the thickness of the fastening component.

¹ Applicants' attorney attempted to resolve this misunderstanding in a telephone call with the Examiner in December 2007, but that effort was unsuccessful.

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Specification at page 36, line 21 to page 37, line 3. Thus, the plane in which the fastening component lies is the infinitely vast hypothetical sheet existing in space in which the length and width dimensions of the fastening component lie. Similarly, the plane in which the front panel of the garment lies is the infinitely vast hypothetical sheet existing in space in which the front panel lies. Claim 1 sets forth that these two planes are approximately perpendicular, much as the planes occupied by a floor and a wall are respectively perpendicular to each other.

The Examiner appears to be comparing the geometric relationship of the components themselves, as opposed to the planes in which they reside. Specifically, the Examiner appears to suggest that because the front of the garment of the '730 patent "includes both a horizontal and a vertical dimension," the fastener can be both parallel to and perpendicular to the front panel. However, that is not what claim 1 recites. Claim 1 refers to the planes occupied by the fastening component and the front panel.

The '730 patent is directed to garments whose fastener lies in a plane that is parallel to the plane in which the front and back portions of the garment lie. There is no illustration, description, teaching, or suggestion in the '730 patent to position the fastening component so that it lies in a plane that is perpendicular to the plane in which the front panel lies. Continuing with the "room" analogy, the plane occupied by a ceiling is generally parallel to the plane occupied by the floor. While it is true that the length dimension of the ceiling is parallel to the length dimension of the floor, and perpendicular to the width dimension of the floor, the planes occupied by the ceiling and floor remain parallel to each other, not perpendicular. Likewise, while the length dimension of the fastening component of the garment of the '730 patent may be perpendicular to the width dimension, the plane in which the fastener lies is parallel – and not in any way perpendicular – to the plane in which the front panel lies.

The invention as set forth in claim 1, in direct contrast, is directed to a packaged, prefastened pant-like garment whose fastener lies in a plane that is perpendicular to the plane in which the front panel lies. Claim 11 is similar to claim 1, but requires both first and second front and side panels. Because the '730 patent does not teach or suggest the configurations set forth in claims 1 and 11, the rejection of claims 1 and 11, and of claims 2-10 and 12-17 which depend therefrom respectively, should be reversed.

b. Independent Claim 18

Independent claim 18 is directed to another embodiment of the invention, and sets forth that the fastening component "lies in a plane approximately parallel to a plane in which an adjacent enclosure side wall lies." In this way, the inward compressive forces associated with packaging exerted by bag side walls upon the resilient fastening components are unlikely to crease, deform, or otherwise damage

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the fastening components. See Specification, page 44, lines 5-14. The '730 patent does not disclose or suggest such a configuration, and the Examiner does not address the key features of this claim in her rejection. Accordingly, the rejection of claim 18 should be reversed.

c. Independent Claim 19

Independent claim 19 is directed to a package of garments having the features, loosing speaking, set forth in claims 1 and 18. Thus, claim 19 is directed to a package of prefastened, refastenable garments in which the fastening component lies in a plane approximately perpendicular to a plane in which the front region lies, and in a plane approximately parallel to a plane in which an adjacent side wall lies. In this way, the inward compressive forces associated with packaging exerted by bag side walls upon the resilient fastening components are less likely to crease, deform, or otherwise damage the fastening components. See, e.g., Figs. 14-16. For the same reasons set forth above with respect to claims 1 and 18, the '730 patent does not disclose a package of garments having these features. Indeed, the Examiner offers no analysis of how the fasteners on the garments of the '730 patent could or would manifest the spatial orientations of the fasteners described in claim 19. Furthermore, the Examiner's reference to WO 97/49618 to Kuske, et al. (see Final Office Action at pp. 4-5), which she notes is incorporated by reference within the '730 patent, does not cure this deficiency. Accordingly, the rejection of claim 19, and of claims 20 and 21 which depend therefrom, should be reversed.

d. Independent Claim 22

Claim 22, also directed to a package of garments, sets forth a related variant in which each fastening component lies in a plane which is approximately parallel to a plane occupied by an adjacent enclosure wall. Examples of such configurations are representatively illustrated in Figures 15-17. In this way, the inward compressive forces associated with packaging exerted by bag walls upon the resilient fastening components are less likely to crease, deform, or otherwise damage the fastening components. Again, the '730 patent does not disclose or suggest such a configuration. And again, the Examiner offers no substantive analysis of how the fasteners on the garments of the '730 patent could or would manifest the spatial orientations of the fasteners and bag walls described in claim 22. Furthermore, the Examiner's reference to WO 97/49618 to Kuske, et al. (see Final Office Action at pp. 4-5), which she notes is incorporated by reference within the '730 patent, does not cure this deficiency. Accordingly, the rejection of claim 22 should be reversed.

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Claims Appendix

The claims on appeal are:

1. A packaged garment defining a waist opening and a leg opening, the garment comprising,
 - a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;
 - a front side panel extending transversely from a side of the front panel;
 - a back side panel extending transversely from a side of the back panel;
 - wherein the front side panel is connected to the back side panel to form a prefastened, refastenable seam, the refastenable seam comprising a fastening component;
 - wherein the fastening component lies in a plane approximately perpendicular to a plane in which the front panel lies.
2. The garment of claim 1 wherein the refastenable seam is formed between a body-facing surface of the front side panel and a clothing-facing surface of the back side panel.
3. The garment of claim 2 wherein the front side panel is folded over a distal edge of the back side panel.
4. The garment of claim 2 wherein the fastening component is permanently bonded to the back side panel.
5. The garment of claim 1 wherein the refastenable seam is formed between a clothing-facing surface of the front side panel and a body-facing surface of the back side panel.
6. The garment of claim 5 wherein the back side panel is folded over a distal edge of the front side panel.

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7. The garment of claim 5 wherein the fastening component is permanently bonded to the front side panel.
8. The garment of claim 1 wherein the fastening component is engaged with a mating fastening component, wherein the mating fastening component is integral with a side panel.
9. The garment of claim 1 wherein the front and back side panels are bonded to the front and back panels, respectively.
10. The garment of claim 1 wherein the fastening component extends transversely outward from a side panel.
11. A packaged garment having a waist opening and two leg openings, the garment comprising:
 - a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;
 - first and second front side panels extending transversely from respective sides of the front panel, each front side panel having a body facing surface and a clothing facing surface;
 - first and second back side panels extending transversely from respective sides of the back panel, each back side panel having a body facing surface and a clothing facing surface;
 - wherein the first front side panel is connected to the first back side panel to form a first prefastened, refastenable seam, the first refastenable seam comprising a first fastening component;
 - the second front side panel is connected to the second back side panel to form a second prefastened, refastenable seam, the second refastenable seam comprising a second fastening component;
 - wherein the first and second fastening components lie in first and second planes, the first and second planes being approximately perpendicular to a plane in which the front panel lies.

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12. The garment of claim 11 further wherein:

the first and second front side panels define first and second front side panel distal edges, respectively, the first and second front side panel distal edges being approximately perpendicular to the front waist edge; and

the first and second back side panels define first and second back side panel distal edges, respectively, the first and second back side panel distal edges being approximately perpendicular to the back waist edge,

wherein a transverse distance between the first and second front side panel distal edges is equal to a transverse distance between the first and second back side panel distal edges.

13. The garment of claim 11, further wherein:

the first and second front side panels define first and second front side panel distal edges, respectively, the first and second front side panel distal edges being approximately perpendicular to the front waist edge; and

the first and second back side panels define first and second back side panel distal edges, respectively, the first and second back side panel distal edges being approximately perpendicular to the back waist edge,

wherein a transverse distance between the first and second front side panel distal edges is less than a transverse distance between the first and second back side panel distal edges.

14. The garment of claim 11 wherein the first refastenable seam is formed between the body-facing surface of the first front side panel and the clothing-facing surface of the first back side panel, and the second refastenable seam is formed between the body-facing surface of the second front side panel and the clothing-facing surface of the second back side panel.

15. The garment of claim 14 wherein the first front side panel is folded over a distal edge of the first back side panel, and the second front side panel is folded over a distal edge of the second back side panel.

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16. The garment of claim 11 wherein the first refastenable seam is formed between the clothing-facing surface of the first front side panel and the body-facing surface of the first back side panel, and the second refastenable seam is formed between the clothing-facing surface of the second front side panel and the body-facing surface of the second back side panel.

17. The garment of claim 16 wherein the first back side panel is folded over a distal edge of the first front side panel, and the second back side panel is folded over a distal edge of the second front side panel.

18. A packaged garment having a waist opening and a leg opening, the garment comprising,
a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;
a front side panel extending transversely from a side of the front panel, the front side panel having a body facing surface and a clothing facing surface;
a back side panel extending transversely from a side of the back panel, the back side panel having a body facing surface and a clothing facing surface;
wherein the front side panel is connected to the back side panel to form a prefastened, refastenable seam, the refastenable seam comprising a fastening component,
wherein the fastening component lies in a plane approximately parallel to a plane in which an adjacent enclosure side wall lies.

19. A package of prefastened, refastenable garments, comprising:

a generally polyhedral enclosure composed of a flexible material surrounding a plurality of prefastened, refastenable garments, the polyhedral enclosure comprising a pair of side walls, a pair of end walls, a top wall, and a bottom wall,

wherein each of the plurality of garments comprises:

a front region comprising a front panel and defining a front waist edge, a back region comprising a back panel and defining a back waist edge, and a crotch region connecting the front and back regions;

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a front side panel extending transversely from a side of the front panel;
a back side panel extending transversely from a side of the back panel;
wherein the front side panel is connected to the back side panel to form a prefastened, refastenable seam, the refastenable seam comprising a fastening component;
wherein the fastening component lies in a plane approximately perpendicular to a plane in which the front region lies, and in a plane approximately parallel to a plane in which an adjacent side wall lies.

20. The package of claim 19, further comprising an end garment adjacent one of the end walls, wherein the end garment comprises:

an end garment front region comprising an end garment front panel, an end garment back region comprising an end garment back panel, and an end garment crotch region connecting the end garment front and end garment back regions;

an end garment front side panel extending transversely from a side of the end garment front panel;

an end garment back side panel extending transversely from a side of the end garment back panel;

wherein the end garment front side panel is connected to the end garment back side panel to form an end garment refastenable seam, the end garment refastenable seam comprising an end garment fastening component;

wherein the end garment fastening component lies in a plane approximately parallel to a plane in which the end garment front panel lies.

21. The package of claim 20, wherein the end garment fastening component lies in a plane approximately parallel to a plane in which an end wall adjacent to the end garment lies.

22. A package of prefastened, refastenable pant-like disposable garments, comprising:

a generally polyhedral enclosure composed of a flexible material surrounding a plurality of prefastened, refastenable disposable garments, the polyhedral enclosure comprising a pair of side walls, a pair of end walls, a top wall, and a bottom wall, wherein each garment comprises front and back regions, a crotch region connection the front and back regions, and at a fastening component

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connecting the front and back regions to place each of the plurality of garments in a prefastened, pant-like configuration;

wherein each fastening component lies in a plane which is approximately parallel to a plane occupied by an adjacent enclosure wall.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.